

OFFICIAL TITLE

AN INITIATIVE MEASURE

AMENDING TITLE 36, CHAPTER 6, ARIZONA REVISED STATUTES BY
REPEALING SECTIONS 36-601.01 AND 36-601.02; ADDING NEW SECTION 36-
601.01; RELATING TO SMOKING

Sec 1. Title

This act may be cited as the “Arizona Non-Smoker Protection Act.”

Sec. 2. Purpose and Intent

In order to protect children, patrons, employees, veterans, jobs, tourism and private property rights, the people of Arizona declare their intent to enact the Arizona Non-Smoker Protection Act to ban smoking in all public places and places of employment with exceptions including bars and tobacco shops.

Sec. 3. Sections 36-601.01 and 36-601.02 Arizona Revised Statutes are repealed.

Sec. 4. Title 36, Chapter 6, Article 1 is amended by adding section 36-601.01 to read:

36-601.01 Smoking in public places and places of employment; exceptions

A. DEFINITIONS. THE FOLLOWING WORDS AND PHRASES, WHENEVER USED IN THIS SECTION, SHALL BE CONSTRUED AS DEFINED IN THIS SECTION:

1. “EMPLOYEE” MEANS ANY PERSON WHO PERFORMS ANY SERVICE ON A FULL-TIME, PART-TIME OR CONTRACTED BASIS WHETHER OR NOT THE PERSON IS DENOMINATED AN EMPLOYEE, INDEPENDENT CONTRACTOR OR OTHERWISE AND WHETHER OR NOT THE PERSON IS COMPENSATED OR IS A VOLUNTEER.

2. “EMPLOYER” MEANS A PERSON, BUSINESS, PARTNERSHIP, ASSOCIATION, THE STATE OF ARIZONA AND ITS POLITICAL SUBDIVISIONS, CORPORATIONS, INCLUDING A MUNICIPAL CORPORATIONS, TRUST, OR

NON-PROFIT ENTITY THAT EMPLOYS THE SERVICES OF ONE OR MORE INDIVIDUAL PERSONS.

3. "ENCLOSED AREA" MEANS ALL SPACE BETWEEN A FLOOR AND CEILING THAT IS ENCLOSED ON ALL SIDES BY PERMANENT OR TEMPORARY WALLS OR WINDOWS (EXCLUSIVE OF DOORWAYS), WHICH EXTEND FROM THE FLOOR TO THE CEILING, ENCLOSED AREA INCLUDES A REASONABLE DISTANCE FROM ANY ENTRANCES, WINDOWS AND VENTILATION SYSTEMS SO THAT PERSONS ENTERING OR LEAVING THE BUILDING OF FACILITY SHALL NOT BE SUBJECTED TO BREATHING TOBACCO SMOKE AND SO THAT TOBACCO SMOKE DOES NOT ENTER THE BUILDING OR FACILITY THROUGH ENTRANCES, WINDOWS, VENTILATION SYSTEMS OR ANY OTHER MEANS.

4. "HEALTH CARE FACILITY" MEANS ANY ENCLOSED AREA UTILIZED BY ANY HEALTH CARE INSTITUTION LICENSED ACCORDING TO TITLE 36 CHAPTER 4, CHAPTER 6 ARTICLE 7, OR CHAPTER 17, OR ANY HEALTH CARE PROFESSIONAL LICENSED ACCORDING TO TITLE 32 CHAPTERS 7, 8, 11, 13, 14, 15, 15.1, 16, 17, 18, 19, 19.1, 21, 25, 28, 29, 33, 34, 35, 39, 41, OR 42.

5. "PERSON" MEANS AN INDIVIDUAL, PARTNERSHIP, CORPORATION, LIMITED LIABILITY COMPANY, ENTITY, ASSOCIATION, GOVERNMENTAL SUBDIVISION OR UNIT OF A GOVERNMENTAL SUBDIVISION, OR A PUBLIC OR PRIVATE ORGANIZATION OF ANY CHARACTER.

6. "PHYSICALLY SEPARATED" MEANS ALL SPACE BETWEEN A FLOOR AND CEILING WHICH IS ENCLOSED ON ALL SIDES BY SOLID WALLS OR WINDOWS (EXCLUSIVE OF DOOR OR PASSAGEWAY) AND INDEPENDENTLY VENTILATED FROM SMOKE-FREE AREAS, SO THAT AIR WITHIN PERMITTED SMOKING AREAS DOES NOT DRIFT OR GET VENTED INTO SMOKE-FREE AREAS.

7. "PLACES OF EMPLOYMENT" MEANS AN ENCLOSED AREA UNDER THE CONTROL OF A PUBLIC OR PRIVATE EMPLOYER THAT EMPLOYEES NORMALLY FREQUENT DURING THE COURSE OF EMPLOYMENT, INCLUDING OFFICE BUILDINGS, WORK AREAS, AUDITORIUMS, EMPLOYEE

LOUNGES, RESTROOMS, CONFERENCE ROOMS, MEETING ROOMS, CLASSROOMS, CAFETERIAS, HALLWAYS, STAIRS, ELEVATORS, HEALTH CARE FACILITIES, PRIVATE OFFICES AND VEHICLES OWNED AND OPERATED BY THE EMPLOYER DURING WORKING HOURS WHEN THE VEHICLE IS OCCUPIED BY MORE THAN ONE PERSON. A PRIVATE RESIDENCE IS NOT A “PLACE OF EMPLOYMENT” UNLESS IT IS USED AS A CHILD CARE, ADULT DAY CARE, OR HEALTH CARE FACILITY.

8. “VETERAN AND FRATERNAL CLUBS” MEANS A CLUB AS DEFINED IN A.R.S. 4-101(7)(A)(B) OR (C).

9. “PUBLIC PLACE” MEANS ANY ENCLOSED AREA TO WHICH THE PUBLIC IS INVITED OR IN WHICH THE PUBLIC IS PERMITTED, INCLUDING AIRPORTS, BANKS, BARS, COMMON AREAS OF APARTMENT BUILDINGS, CONDOMINIUMS OR OTHER MULTIFAMILY HOUSING FACILITIES, EDUCATIONAL FACILITIES, ENTERTAINMENT FACILITIES OR VENUES, HEALTH CARE FACILITIES, HOTEL AND MOTEL COMMON AREAS, LAUNDROMATS, PUBLIC TRANSPORTATION FACILITIES, RECEPTION AREAS, RESTAURANTS, RETAIL FOOD PRODUCTION AND MARKETING ESTABLISHMENTS, RETAIL SERVICE ESTABLISHMENTS, RETAIL STORES, SHOPPING MALLS, SPORTS FACILITIES, THEATERS, AND WAITING ROOMS. A PRIVATE RESIDENCE IS NOT A “PUBLIC PLACE” UNLESS IT IS USED AS A CHILD CARE, ADULT DAY CARE, OR HEALTH CARE FACILITY.

10. “RETAIL TOBACCO STORE” MEANS A RETAIL STORE THAT DERIVES THE MAJORITY OF ITS SALES FROM TOBACCO PRODUCTS AND ACCESSORIES. “RETAIL TOBACCO STORE” DOES NOT INCLUDE GROCERY STORES, CONVENIENCE STORES, GAS STATIONS, GENERAL RETAILERS OR SIMILAR RETAIL ESTABLISHMENTS

11. “SMOKING” MEANS INHALING, EXHALING, BURNING, OR CARRYING OR POSSESSING ANY LIGHTED TOBACCO PRODUCT, INCLUDING CIGARS, CIGARETTES, PIPE TOBACCO AND ANY OTHER LIGHTED TOBACCO PRODUCT.

12. "SPORTS FACILITIES" MEANS ENCLOSED AREAS OF SPORTS PAVILIONS, STADIUMS, GYMNASIUMS, HEALTH SPAS, BOXING ARENAS, SWIMMING POOLS, ROLLER AND ICE RINKS, BILLIARD HALLS, BOWLING ALLEYS, AND OTHER SIMILAR PLACES WHERE MEMBERS OF THE GENERAL PUBLIC ASSEMBLE TO ENGAGE IN PHYSICAL EXERCISE, PARTICIPATE IN ATHLETIC COMPETITION, OR WITNESS SPORTING EVENTS.

13. "BAR" MEANS AN ENCLOSED ESTABLISHMENT WHERE THE PRIMARY PURPOSE IS THE SALE, SERVICE AND CONSUMPTION OF ALCOHOLIC BEVERAGES. "BAR" ALSO INCLUDES A SEPARATE, ENCLOSED PART OF A LARGER ESTABLISHMENT, SUCH AS A HOTEL, POOL HALL, PRIVATE, VETERANS' OR SERVICE CLUB, RACE TRACK, RESTAURANT, OR OTHER SIMILAR ESTABLISHMENT, IF (1) THE PRIMARY PURPOSE OF THAT SEPARATE, ENCLOSED PART OF THE LARGER ESTABLISHMENT IS THE SALE, SERVICE AND CONSUMPTION OF ALCOHOLIC BEVERAGES; AND (2) THAT PART OF THE LARGER ESTABLISHMENT IS PHYSICALLY SEPARATED FROM THE REMAINDER OF THE LARGER ESTABLISHMENT BY FLOOR TO CEILING PARTITIONS AND HAS A SEPARATE VENTILATION SYSTEM.

B. SMOKING IS PROHIBITED IN ALL PUBLIC PLACES AND PLACES OF EMPLOYMENT WITHIN THE STATE OF ARIZONA, EXCEPT THE FOLLOWING:

1. PRIVATE RESIDENCES, EXCEPT WHEN USED AS A LICENSED CHILD CARE, ADULT DAY CARE, OR HEALTH CARE FACILITY.

2. HOTEL AND MOTEL ROOMS THAT ARE RENTED TO GUESTS AND ARE DESIGNATED AS SMOKING ROOMS; PROVIDED, HOWEVER, THAT NOT MORE THAN FIFTY PERCENT OF ROOMS RENTED TO GUESTS IN A HOTEL OR MOTEL ARE SO DESIGNATED.

3. RETAIL TOBACCO STORES THAT PROHIBIT MINORS FROM ENTERING OR REMAINING ON THE PREMISES AND THAT ARE PHYSICALLY SEPARATED FROM SURROUNDING AREAS BY FLOOR TO CEILING PARTITIONS AND HAVE A SEPARATE VENTILATION SYSTEM.

4. VETERANS AND FRATERNAL CLUBS WHEN THEY ARE NOT OPEN TO THE GENERAL PUBLIC.

5. SMOKING WHEN ASSOCIATED WITH A RELIGIOUS CEREMONY PRACTICED PURSUANT TO THE AMERICAN INDIAN RELIGIOUS FREEDOM ACT OF 1978.

6. OUTDOOR PATIOS SO LONG AS TOBACCO SMOKE DOES NOT ENTER AREAS WHERE SMOKING IS PROHIBITED THROUGH ENTRANCES, WINDOWS, VENTILATION SYSTEMS, OR OTHER MEANS.

7. A THEATRICAL PERFORMANCE UPON A STAGE OR IN THE COURSE OF A FILM OR TELEVISION PRODUCTION IF THE SMOKING IS PART OF THE PERFORMANCE OR PRODUCTION.

8. BARS AS PROVIDED IN SUBSECTION C.

C. A PERSON WHO OWNS A BAR MAY PERMIT THE SMOKING OF TOBACCO IN ALL OR PART OF THE BAR ONLY AS PROVIDED IN THIS SUBSECTION, A SUBJECT TO THE FOLLOWING:.

1. A PERSON WHO OWNS A BAR THAT PERMITS SMOKING IN ANY PART OF THE BAR SHALL NOT PERMIT A MINOR TO ENTER OR REMAIN IN THE BAR.

2. A PERSON WHO OWNS A BAR THAT PERMITS SMOKING IN ANY PART OF THE BAR SHALL POST A CONSPICUOUS SIGN AT EACH ENTRANCE TO THE BAR ADVISING PATRONS AND EMPLOYEES THAT SMOKING IS PERMITTED IN PART OR ALL OF THE BAR.

3. A PERSON WHO OWNS A BAR WHO VIOLATES THIS SECTION IS GUILTY OF A CLASS THREE MISDEMEANOR.

D. TO PROTECT THE PRIVATE PROPERTY RIGHTS OF ALL PERSONS WHO OWN BARS AND RETAIL TOBACCO STORES IN THIS STATE, THE PEOPLE OF ARIZONA FIND AND DETERMINE A SINGLE STATEWIDE STANDARD FOR SMOKING IN BARS AND TOBACCO SHOPS TO BE A MATTER OF STATEWIDE CONCERN. IT IS DECLARED THAT THIS SECTION PREEMPTS ALL MUNICIPAL AND COUNTY LAWS, CHARTERS, ORDINANCES, RULES AND REGULATIONS RELATING TO SMOKING IN BARS AND RETAIL TOBACCO STORES.

E. NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, AN OWNER, OPERATOR, MANAGER, OR OTHER PERSON OR ENTITY IN CONTROL OF AN ESTABLISHMENT, FACILITY, OR OUTDOOR AREA MAY DECLARE THAT ENTIRE ESTABLISHMENT, FACILITY, OR OUTDOOR AREA AS A NONSMOKING PLACE.

F. POSTING OF SIGNS AND ASHTRAY REMOVAL.

1. "NO SMOKING" SIGNS OR THE INTERNATIONAL "NO SMOKING" SYMBOL (CONSISTING OF A PICTORIAL REPRESENTATION OF A BURNING CIGARETTE ENCLOSED IN A RED CIRCLE WITH A RED BAR ACROSS IT) SHALL BE CLEARLY AND CONSPICUOUSLY POSTED BY THE OWNER, OPERATOR, MANAGER, OR OTHER PERSON IN CONTROL OF THAT PLACE IDENTIFYING WHERE SMOKING IS PROHIBITED BY THIS SECTION AND WHERE COMPLAINTS REGARDING VIOLATIONS MAY BE REGISTERED.
2. EVERY PUBLIC PLACE AND PLACE OF EMPLOYMENT WHERE SMOKING IS PROHIBITED BY THIS SECTION SHALL HAVE POSTED AT EVERY ENTRANCE A CONSPICUOUS SIGN CLEARLY STATING THAT SMOKING IS PROHIBITED.
3. ALL ASHTRAYS SHALL BE REMOVED FROM ANY AREA WHERE SMOKING IS PROHIBITED BY THIS SECTION BY THE OWNER, OPERATOR, MANAGER, OR OTHER PERSON HAVING CONTROL OF THE AREA.

G. NO EMPLOYER MAY DISCHARGE OR RETAILATE AGAINST AN EMPLOYEE BECAUSE THAT EMPLOYEE EXERCISED ANY RIGHTS AFFORDED BY THIS SECTION OR REPORTS OR ATTEMPTS TO PROSECUTE A VIOLATION OF THIS SECTION.

H. AN OWNER, MANAGER, OPERATOR OR EMPLOYEE OF PLACE REGULATED BY THIS LAW SHALL INFORM ANY PERSON WHO IS SMOKING IN VIOLATION OF THIS LAW THAT SMOKING IS ILLEGAL AND REQUEST THAT THE ILLEGAL SMOKING STOP IMMEDIATELY.

I. THIS LAW DOES NOT CREATE ANY NEW PRIVATE RIGHT OF ACTION NOR DOES IT EXTINGUISH ANY EXISTING COMMON LAW CAUSES OF ACTION.

J. A PERSON WHO SMOKES WHERE SMOKING IS PROHIBITED IS GUILTY OF A PETTY OFFENSE WITH A FINE OF NOT LESS THAN FIFTY DOLLARS AND NOT MORE THAN THREE HUNDRED DOLLARS.

K. TRIBAL SOVEREIGNTY – THIS SECTION HAS NO APPLICATION ON INDIAN RESERVATIONS AS DEFINED IN ARS 42-3301(2).

Sec. 5. Severability

If any provision, clause, sentence or paragraph of this Act or the application thereof to any person or circumstances shall be held invalid, that invalidity shall not affect the other provisions of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.